

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
) CC Docket No. 95-116
Telephone Number Portability) RM 8535

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FURTHER COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

Teresa Marrero, Esq.
Senior Regulatory Counsel
Teleport Communications Group Inc.
Two Teleport Drive, Suite 300
Staten Island, NY 10311
(718) 355-2939
Its Attorney

L. Fredrik Cederqvist, Esq.
Policy Analyst
Government Affairs

Ed Gould
Vice-President
Network Architecture and Technology

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For the Commission

Secretary

012

SUMMARY

To encourage facilities-based competition, the Telecommunications Act of 1996 requires that number portability costs be borne by all telecommunications carriers in a competitively neutral manner. In addressing cost allocation and cost recovery issues, the Commission has properly separated costs into three categories: (1) shared costs; (2) carrier-specific costs directly related to number portability; and (3) carrier-specific costs not directly related to number portability. These three categories of costs have distinct characteristics that require different analysis in their allocation and recovery.

TCG supports the Commission's tentative conclusion that the cost allocation for permanent number portability must be achieved through a competitively neutral cost recovery mechanism that (1) does not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber; and (2) does not have a disparate effect on the ability of competing service providers to earn a normal return.

Since number portability benefits all customers of all telecommunications carriers, including incumbent and competitive local exchange carriers, long distance carriers, and wireless providers, competitive neutrality requires that all carriers pay for shared number portability costs. TCG supports the

Commission's conclusion that these carriers must pay for shared costs in proportion to their gross revenues minus payments made to other carriers.

Competitive neutrality also requires that each carrier should bear its own internal costs, both directly and indirectly related to number portability. All carriers should be free to decide to recover number portability costs from their customers or to "absorb" such costs. However, explicit surcharges should not be permitted because they unfairly paint number portability as raising costs rather than as an essential element of effective competition that allows all carriers to compete, thus bringing benefits to all consumers.

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FURTHER COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

Teleport Communications Group Inc. ("TCG"), pursuant to the Commission's July 2, 1996 Further Notice of Proposed Rulemaking ("NPRM") in the above-captioned matter,¹ hereby offers the following comments.

I. INTRODUCTION

TCG, the nation's first and largest competitive local telecommunications provider, commends the Federal Communications Commission ("Commission" or "FCC") in its thorough analysis of cost allocation and cost recovery issues for permanent number portability. In evaluating these issues, the Commission has properly separated costs into three categories: (1) shared costs; (2) carrier-specific costs directly related to number portability; and (3) carrier-specific costs not directly related to number portability. These three categories of costs have distinct characteristics that require different analysis in their

¹ Telephone Number Portability, CC Docket No. 95-116, Further Notice of Proposed Rulemaking (NPRM), FCC 96-286 (released July 2, 1996).

allocation and recovery. In these comments, TCG separately (1) analyzes the nature of the three categories of costs associated with number portability; (2) discusses how these costs should be allocated among telecommunications carriers; and (3) recommends a cost recovery methodology which ensures that number portability will provide the effect intended by Congress: increased facilities-based competition.

The Telecommunications Act of 1996² requires all local exchange carriers to provide permanent number portability.³ The FCC has extended this obligation to CMRS providers.⁴ The Act further requires that the "cost of . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis."⁵ This requirement is crucial. Permanent number portability will allow customers to retain their telephone numbers while choosing among multiple service providers, but only if number portability costs among carriers are truly borne on a competitively neutral basis. If facilities-based entrants are forced to pay a disproportionate amount of number portability costs, they will not only be forced to subsidize the incumbents' cost of compliance, but as a result they will also be unable to

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

³ 47 U.S.C. §251(a)(2). Exceptions apply only for certain small or rural carriers. See 47 U.S.C. §251(f).

⁴ Telephone Number Portability, CC Docket No. 95-116, First Report and Order, FCC 96-286 (released July 2, 1996) at ¶166.

⁵ 47 U.S.C. §251(e)(2).

compete effectively on price and quality of service. This is particularly true for facilities-based entrants, such as TCG, which upon entering a new market must install networks capable of providing number portability.

TCG supports the Commission's tentative conclusion that the cost allocation for permanent number portability must be a competitively neutral cost recovery mechanism that (1) does not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber; and (2) does not have a disparate effect on the ability of competing service providers to earn a normal return.⁶

TCG believes that these principles dictate that all carriers should support the costs of shared facilities (e.g., regional or state-specific number portability databases) and that all carriers should pay for their own internal costs, as explained in further detail below. Specific cost allocation mechanisms following these principles will encourage facilities-based competition, a fundamental purpose of the Telecommunications Act of 1996. By adopting the recommendations set forth herein, the Commission will allow entrants to more effectively compete on price and quality of service to the widest array of consumers. This result can only occur by ensuring that facilities-based

⁶ NPRM at ¶210.

entrants can compete on equal standing with incumbents to serve consumers wishing or needing to retain their numbers.

II. COSTS OF FACILITIES THAT MUST BE SHARED BY ALL CARRIERS FOR THE PROVISION OF PERMANENT NUMBER PORTABILITY MUST BE ALLOCATED IN PROPORTION TO EACH TELECOMMUNICATIONS CARRIER'S TOTAL GROSS TELECOMMUNICATIONS REVENUES MINUS CHARGES PAID TO OTHER CARRIERS.

A. Shared Costs Should Be Paid By All Carriers Using The Database.

All telecommunications providers, including ILECs, CLECs, IXCs, and CMRS providers will utilize either the regional third party number portability databases set up under the auspices of the North American Numbering Council ("NANC"), or state-specific databases, where applicable, to port numbers between carriers. Number portability has now become a requirement of doing business for all providers. It stands to reason, therefore, that all carriers should equitably share the burden of the costs for providing number portability. The Telecommunications Act of 1996 requires no less, stating that the "cost of . . . number portability shall be borne by *all telecommunications carriers* on a competitively neutral basis."⁷

The Commission tentatively concludes that "the recovery associated with the costs of these databases should be allocated in proportion to each telecommunications carrier's total gross telecommunications revenues minus charges paid to other

⁷ 47 U.S.C. §251(e)(2) (emphasis added).

carriers.”⁸ TCG strongly supports the FCC’s tentative conclusion.

TCG has advocated the use of a mechanism that allocates costs in proportion to the size of each telecommunications provider.⁹ Allocating shared costs among providers in proportion to gross revenues will ensure that funding of the database will comport with the cost allocation principles established by the Commission in this docket because it prevents any carrier from gaining an appreciable, incremental cost advantage over another service provider in competing for a specific subscriber, and will not produce a disparate effect on the ability of competing service providers to earn a normal return.

In previous comments, TCG suggested that the Commission allocate shared costs in proportion to the number of access lines served by each carrier.¹⁰ On further reflection, TCG recognizes that such a mechanism falls short in equitably distributing the cost burden among carriers other than LECs. Such a mechanism would have disparate effects on the ability of LECs and IXC’s to earn a normal profit by allocating all of the cost of the shared facilities to the LECs. Since all carriers have a duty under the Act to advance permanent number portability, it is clearly inequitable to load all of the shared costs only on local

⁸ NPRM at ¶213.

⁹ See Comments of TCG Inc., In re Telephone Number Portability, March 29, 1996, at 6.

¹⁰ Id.

providers and therefore TCG no longer supports an access line-based method.

B. Charges Paid To Other Carriers Should Not Be Included In A Carrier's Gross Revenues For The Purpose Of Calculating The Contribution To Shared Costs.

The Commission suggests that charges paid to other carriers, such as access charges and interconnection charges, should be subtracted from gross revenues in calculating contributions to the central database administrator.¹¹ TCG agrees that such accounting practices are necessary to avoid double counting of revenues. In addition, it properly takes into account each carriers actual net revenue and hence more accurately reflects its ability to pay.

Allocating costs in proportion to gross revenues minus payments to other carriers also adheres to the principles of competitive neutrality suggested by the Commission. Such a mechanism will not give any carrier an appreciable, incremental cost advantage over another service provider when competing for a specific provider and will not have a disparate effect on the ability of competing providers to earn a normal return.

C. Cost Allocation Of State-Specific Databases Should Be Governed By The Commission's Rules.

TCG also agrees with the Commission's tentative conclusion that pricing for state-specific databases should be governed by

¹¹ NPRM at ¶213.

the pricing principles established in this proceeding.¹² The Commission has wisely given the states the authority to opt out of the regional database plan to be organized by NANC where the state believes it can better encourage the expedient introduction of permanent number portability. While the state will be best qualified to assess the specific costs involved in a particular state solution, it is imperative that cost allocation and recovery mechanisms follow competitively neutral national guidelines set by the Commission in order to encourage facilities-based competition.

III. CARRIER-SPECIFIC COSTS DIRECTLY ATTRIBUTABLE TO NUMBER PORTABILITY SHOULD BE BORNE BY EACH CARRIER.

All carriers participating in permanent number portability will incur carrier-specific costs that are directly attributable to providing number portability. In other words, carriers will incur certain costs that they would not otherwise incur but for permanent number portability (which must be distinguished from indirect costs, as discussed in the section IV). Carrier-specific costs that are directly attributable to number portability include carrier-specific Service Management System (SMS) databases, SS7 message transport costs for LNP, and switch software upgrades. The Commission suggests that there are at least two ways of allocating these costs among providers: (1)

¹²

NPRM at ¶211.

carriers could bear their own costs, or (2) carriers in a given region could pool their number portability costs, which then would be spread across all carriers providing and using number portability based on some allocator, such as gross revenues or number of lines.¹³ TCG strongly encourages the Commission to order that all carriers should bear their own costs of deploying number portability in their networks.

Requiring each carrier to bear its own infrastructure investment costs ensures that each carrier will make efficient infrastructure decisions and protects against exaggeration of internal costs by incumbent LECs. In contrast, if costs incurred by a carrier are thrown into a pool to be funded by all carriers, inefficient companies will be rewarded by being subsidized by their competitors. By protecting inefficient carriers, such a mechanism would violate the Act's requirement of competitive neutrality.

Pooling costs unnecessarily would require CLECs to implement time-consuming, burdensome cost studies that would significantly drain a CLEC's personnel resources and revenues, thus impeding its ability to effectively compete. CLECs generally are not price regulated and are thus exempted from the onerous burden of such cost studies. Pooling of costs, therefore, would add to a CLEC's cost of doing business and undermine a CLECs ability to compete against the incumbent.

¹³

NPRM at ¶221.

IV. CARRIER-SPECIFIC COSTS INDIRECTLY ATTRIBUTABLE TO NUMBER PORTABILITY SHOULD BE BORNE BY EACH INDIVIDUAL CARRIER, JUST LIKE ALL OTHER NETWORK UPGRADES.

The Commission tentatively concludes that carrier-specific costs not directly related to number portability should be borne by individual carriers such as other network upgrades.¹⁴ TCG strongly supports this conclusion.

Advanced Intelligent Network (AIN) capability and switch software upgrades are examples of generalized carrier-specific costs that are indirectly related to number portability. While these capabilities are necessary to port numbers under the Local Routing Number (LRN) methodology, the commonly accepted number portability routing method, they are also used for revenue producing purposes other than number portability, such as CLASS functions.¹⁵ Revenue producing services based on these technologies are already being offered and advertised by the regional Bell operating companies ("RBOCs"). Since these upgrades provide RBOC customers with benefits in areas other than number portability, it would be inappropriate to allocate the cost of these upgrades to number portability.

¹⁴ NPRM at ¶227.

¹⁵ Id.

V. A COMPETITIVE ENVIRONMENT DICTATES THAT CARRIERS SHOULD BE FREE TO CHOOSE TO RECOVER COSTS THROUGH CUSTOMER ACCESS LINE CHARGES OR FROM SHAREHOLDERS, BUT NOT THROUGH "NUMBER PORTABILITY" SURCHARGES.

Once number portability costs have been allocated among carriers, the next step is to determine how carriers should be allowed to recover such costs, and whether such costs should be recovered at all. TCG believes that for all three categories of costs, each carrier must be permitted to choose to recover such costs through customer access line charges, subject to applicable price cap restrictions, or to absorb voluntarily such costs in whole or in part.

The Commission should mandate that all costs necessary to implement number portability must be recovered without the use of a "number portability" surcharge. Explicit surcharges on customer bills are not competitively neutral as mandated by the Act because they would improperly promote hostility toward number portability as a concept, and toward potential competitors as users of the numbers.

To the extent the Commission allows carriers to recover number portability costs from consumers, a question arises as to how such costs shall be allocated among the customer base. The Commission seeks comment on whether costs to consumers should (1) vary among carriers in a given geographic region; (2) remain constant among all carriers in a given region; or (3) vary among

different geographic areas, e.g. states or LATAs (while remaining constant within that region).¹⁶

Carriers must be allowed to design their networks in a fashion that meets their business goals while also meeting their obligations to port numbers according to Commission rules. Thus, carrier-specific costs associated with number portability will vary among providers. If carriers are allowed the flexibility to recover or absorb such costs as they see fit, all carriers will have the incentive to make efficient infrastructure investments in order to compete on price.

Regional database expenses (shared costs) may also differ between regions. For example, different database vendors may offer service according to a different rate structures. Thus, it is only natural for recovery of these costs to vary among regions.

Though carriers must be allowed to design their cost recovery mechanisms to meet competitive pressures, adequate safeguards must be put in place to assure that customer interests are protected. TCG urges the Commission to order that recovery of any of the three categories of costs must remain constant among consumers of any one provider in a particular region. Thus, if carriers choose to waive recovery of any portion of number portability costs, they must do so equally for all customers. Likewise, recovery from consumers should be limited

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NPRM at ¶224.

to their proportionate share of the carrier's net revenues. Otherwise, ILECs will have an incentive to shift number portability costs from customers in areas experiencing more competition to those facing less competition.

The Commission must also make it absolutely clear that carriers may not recover their own number portability costs from other carriers (e.g., through interconnection charges). Allowing carriers to recover number portability costs in this manner would circumvent cost allocation rules adopted by the Commission in this proceeding. This must be distinguished from instances where one carrier ports numbers on behalf of another. For example, one carrier may contract with a second carrier to port its numbers in return for a fee. Secondly, terminating carriers should be free to charge carriers for calls that are "dumped" without dipping, necessitating the terminating carrier to dip on behalf of a non-compliant carrier.¹⁷

VI. CONCLUSION

The Telecommunications Act of 1996 requires that number portability costs be borne by all carriers on a competitively neutral manner. Thus, all telecommunications carriers, including incumbent and competitive local exchange carriers, long distance carriers, and wireless providers must pay for shared costs in proportion to their gross revenues minus payments made to other

¹⁷ Of course, this assumes a scenario where "N-1" dipping is being used and that the technology is available to identify the non-compliant N-1 carrier.

carriers. Internal costs, both directly and indirectly related to number portability, should be borne by each carrier on its own. All carriers should be free to decide to recover number portability costs from their customers through the consumers' monthly rates, subject to applicable price-cap regulation, or to recover such costs from their shareholders ("absorb" the costs). However, explicit surcharges should not be permitted because they unfairly paint number portability as raising costs rather than as an essential element of effective competition that allows all carriers to compete, thus bringing benefits to all customers.

Respectfully submitted,

TELEPORT COMMUNICATIONS GROUP INC.

BY



Teresa Marrero, Esq.
Senior Regulatory Counsel
Two Teleport Drive, Suite 300
Staten Island, NY 10311
(718) 355-2939
Its Attorney

L. Fredrik Cederqvist, Esq.
Policy Analyst
Government Affairs

Ed Gould
Vice-President
Network Architecture and Technology

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CERTIFICATE OF SERVICE

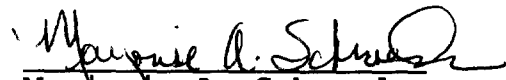
I, Marjorie A. Schroeder, do hereby certify that a copy of the foregoing Further Comments of Teleport Communications Group Inc. was sent by hand delivery on this 16th day of August, 1996, to the following:

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Competitive Pricing Division
Federal Communications Division
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

Wanda M. Harris*
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Division
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

ITS, Inc.
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037


Marjorie A. Schroeder

*Copy on disk